Conflict of roles and duties – why military doctors are doctors

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Conflict of Roles and Duties – Why Military Doctors are Doctors

by Daniel Messelken

Wars and violent conflicts result not only in the destruction of material goods but also always mean death, suffering, and injury for the soldiers or combatants involved and the civilian population in the conflict area. The suffering of those injured in war was described impressively and powerfully by Henri Dunant – whose ideas provided the basis for the Geneva Convention and inspired the Red Cross movement – in his book *A Memory of Solferino*. Doctors and medical personnel play an important role in such situations, since they can help to reduce suffering through their knowledge and efforts. For a long time, armies have employed doctors so that their soldiers can be offered the prospect of prompt medical treatment in the event of an injury.

This article briefly outlines what the medical duty is, and its special role in international law, before discussing the problems resulting from the dual role as doctor and soldier, which military doctors can expect to meet conceptually, and unfortunately in reality as well. With arguments based on international humanitarian law and ethics, this article shows that greater weight should be given to the medical role.

Humanity despite war

The first Geneva Convention in the 19th century, and international humanitarian law as applicable today, accord a special status to medical work and the persons performing it. Although military doctors are part of the military, they are regarded as non-combatants and are immune from attack. This special role entails obligations, since protected personnel are not allowed to participate in combat operations, and furthermore are required to treat all people who are injured or in need equally, regardless of nationality, rank, gender, and other non-medical criteria. Medical care should be neutral and bound solely to the principle of humanitarianism. Humanitarianism is a "*principe essentiel*" (Pictet) of international humanitarian law, and should be regarded as a counterweight to the logic of military necessity.

The dual role of military doctors

Military doctors – who are soldier and doctor at the same time – do a job which particularly reveals the conflict between military necessity and the principle of humanity. The combatant and hence "harming" role of the soldier stands in direct contrast to the healing and caring role of the doctor. To some extent, therefore, military doctors are expected, conceptually to fulfill two roles. Yet these roles are not always compatible with one another, and this can lead to role conflicts or contradictory role obligations ("dual loyalties").[1] If the differences between the two roles are blurred in practice and in military doctors' horizon of experience, there is a danger that they will reflect upon these differences less and less, to the point of not giving them sufficient consideration. In today's conflicts, the blurring of the two roles is exacerbated by "embedding" medical personnel in combat units to guarantee rapid medical assistance.

Different role ethics

Anyone who is de facto expected to fulfill two roles at the same time will be faced with

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the question of which role ethics should be considered as being (more) relevant. It is true that the ethical rules for different roles do not necessarily or always conflict, but in the case of military ethics for soldiers and medical ethics for doctors, it must be assumed that the professional ethics result in conflicting duties.[2] Furthermore, military doctors are often bound by two oaths: the Hippocratic Oath and an oath of allegiance to the army.

Thus, on the one hand, there are military ethics obligations and rules. These are mostly derived from the just war tradition. Of primary relevance to soldiers are the rules of *jus in bello*, according to which force may only be used against combatants, and must be proportionate. Thus, even in war, the use of force is subject to rules. The key point, however, is that according to these rules, in certain situations soldiers are morally justified in attacking enemy soldiers. Then they can even use (potentially) deadly force – without themselves necessarily being in a situation of individual self-defense. A military oath or similar vow commits soldiers to serve their country; obedience, bravery, and camaraderie are often cited as soldierly virtues.

In the tradition of the Hippocratic Oath, doctors swear to devote their lives and energies to the health of their patients, to assist their recovery, and not to do them any harm. In modern medical ethics, according to the most influential approach, a physician's actions are in most cases measured against four principles: respect for the patient's autonomy, not doing harm, beneficence, and (distributive) justice. In one way or another, medical ethics considerations usually focus on promoting the well-being of individual patients. (Exceptions to this are sometimes made in research ethics and public health ethics, where in each case the health of a larger group is considered – but without completely losing sight of the individual patient.)

Soldiers and doctors are therefore bound by fundamentally different professional ethics. To put it crudely, one could say that soldiers defend their country and fellow citizens; doctors cure their patients. Whereas medical ethics follows an individual logic, focusing on the patient's well-being, military ethics adopts a collective point of view, aiming for national security and the survival of a group, and hence follows a collective logic.

Problematic dual role in reality

So now, if for the professional group of military doctors it is unclear whether they are bound by military or medical ethics, in practice they will quickly find themselves in a role conflict with loyalties toward both roles. Ultimately it matters little whether this role conflict actually exists or is "only" felt to exist in an individual case. In recent years, at any rate, there has been a series of cases showing that the (perceived) dual role and uncertainty regarding which role is applicable have in reality resulted in significant moral problems and even violations of international humanitarian law. Here one could mention the participation (or even just the presence) of doctors at interrogations which are immoral or illegal in themselves or because of the methods used; but the same goes for questionable triage criteria and non-medical bases for patient selection (rules of eligibility).[3]

Recently, the alleged need for medical personnel and their vehicles to be better armed has been repeatedly discussed, because (it is claimed) they frequently come under attack in present-day operations. Attacks on medical facilities in conflicts are undoubtedly a problem (on this point, cf. the ICRC Health Care in Danger project). However, one should ask whether such attacks can be prevented by arming medical personnel, or whether in fact the increasingly widespread embedding of medical personnel in military patrols – and

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hence the blurring of combatant and medical roles – actually makes such attacks more likely. It is not without reason that from an international humanitarian law perspective, an appropriate physical distance is required between protected units and combatants (cf. Geneva Convention 1, Article 19).

Another problematic blurring of medical and military roles can be found in campaigns to "*win hearts and minds*", in which medical care is instrumentalized for non-medical purposes. Finally it seems at least less likely that doctors will adopt – as is often assumed – a neutral point of view in the documentation of war crimes and the protection of people's rights, if they perceive themselves more as soldiers.

Importance and weight of the medical role

The examples set out above make it clear that from an ethical perspective, the superimposition of medical and military roles is problematic. Such an assessment is reflected in the rules of international humanitarian law and other important regulations, which require a clear separation of roles and assign medical personnel their medical role. According to these principles, military doctors are first of all doctors and, accordingly, are bound by medical professional ethics (even if they are employed and paid by the military). No justification is required for why they act as physicians and in accordance with the rules for doctors. Instead, justification is required if they are to deviate from this role.

This is made clear, for example, in Articles 16 (AP 1) and 10 (AP 2) of the Additional Protocols to the Geneva Conventions, in which it is stipulated that "[u]nder no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom." Rule 26 of the Customary International Humanitarian Law compiled by the ICRC is very similar:

> *"Punishing a person for performing medical duties compatible with medical ethics or compelling a person engaged in medical activities to perform acts contrary to medical ethics is prohibited."*

Thus, under international humanitarian law, military doctors in their actions are very clearly bound to comply with medical ethics standards. Interestingly, the authors of international humanitarian law explicitly require military doctors to comply with medical ethical (and hence extra-legal) standards. In other words, the conduct of military doctors and medical personnel in war is determined not only by international law, but primarily by the rules of medical ethics.[4] Hence it can be assumed that the medical role takes precedence.

Of course the question still remains open as to which medical ethical standards apply and whether, in a conflict, these differ from civilian standards. The World Medical Association (WMA) provides the best-known answer to this question in its Havana Declaration. The first sentence reads: "Medical Ethics in times of armed conflict is identical to medical ethics in times of peace." There has been much discussion about this statement (or rather, this demand), and it is often criticized for its generality. The direct transferability of civilian clinical standards to conflict situations is disputed. Certainly in individual cases, and especially in extreme cases, differences may be unavoidable. However, this does not call into question the notion that for doctors, even in war and conflict situations, no other professional ethics standards or ethical principles should be applied.[5] Similar arguments are made by a series of important international organizations (including the ICRC and ICMM), that plan to issue a joint document this year on "Ethical Principles in Healthcare in Times of Armed Conflict and Other Emergencies". It explicitly states in the draft document that the principles and bases of medical ethics remain valid

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and unchanged even in the military context (or generally in emergency situations).

Concluding remarks

In the figure of the military doctor, two roles meet which are bound to conflicting role ethics. This role conflict is not only theoretical in nature – it is seen in reality too (as the examples above illustrate). Current trends of increasingly seeing military doctors as soldiers with special skills are clearly in conflict with international humanitarian law and (medical) ethical principles, both of which accord greater significance and a special position to the medical role.

The blurring of military and medical roles is particularly problematic when it is ultimately the responsibility of the individual military doctor to weigh up the roles against each other – if need be, even on a situational basis. Discussions indicate that military doctors with little experience, or ones who are stationed in combat situations, in some cases suppress their medical ethical and legal obligations and perceive themselves (primarily or exclusively) as soldiers. Group dynamics in small units can amplify this tendency.

From a military perspective, it is important that the special role of military doctors, with their obligations and restrictions, is known and recognized at all levels, including among non-medical personnel. It should also be systematically taken into account in operational planning. This requires the (political) will to respect and protect medical personnel and their independent, neutral medical duty in accordance with the principle of humanity. Ultimately this is also in the interests of the combatants, since this is the only way to guarantee that military doctors are, firstly, able to fulfill their moral and legal obligations, and, secondly, in an emergency are also available as military doctors, when their combatant fellow soldiers or other victims of violence and sufferers in the conflict are in need of medical assistance.

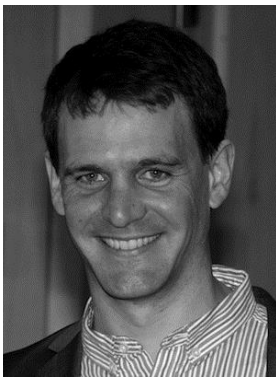
1 Cf. e.g. Allhoff, F. (2008) (ed.): Physicians at war – the dual-loyalties challenge, Dordrecht.

2 An interesting article on this point is Sidel, V. & Barry S. (2003): Physician-Soldier: A Moral Dilemma?, in: Beam, T. (ed.): Military Medical Ethics Vol 1, Washington, pp. 293–312.

3 For current discussions of issues in military medical ethics, see the yearly Annual Proceedings of the ICMM Workshops on Military Medical Ethics, Bern. http://publications.melac.ch [accessed 13 March 2015] and Gross, M. & Carrick, D. (2013) (eds.): Military medical ethics for the 21st century, Farnham.

4 For a detailed account of the role of military doctors under international law, cf. Mehring, S. (2015): First do no harm: medical ethics in international humanitarian law, Leiden.

5 On this point, cf. Nathanson, V. (2013): Medical Ethics in Peacetime and Wartime: The Case for a Better Understanding, International Review of the Red Cross 95/no. 889, pp. 189–213.



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